

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6450

Joint Petition of Intermedia Communications,)
Inc. and WorldCom, Inc. for Approval of)
Transfer of Control and Merger)

Order entered: 12/28/2000

INTRODUCTION

On October 24, 2000, Intermedia Communications, Inc. ("Intermedia") and WorldCom, Inc. ("WorldCom") (collectively "Petitioners") jointly filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109 and 311, for approval of a transfer of control of Intermedia from its current shareholders to WorldCom. The transfer of control is to be accomplished through a merger of Intermedia into a newly created wholly-owned subsidiary of WorldCom with Intermedia as the surviving entity.

On December 6, 2000, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the transfer of control of Intermedia to WorldCom. The Department noted that the transaction would be transparent to Vermont consumers and should not cause any changes in services or rates offered by Intermedia. Further, the Department also had no objection to the issuance of an order without hearing or further investigation.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. Intermedia is qualified to transact business in the State of Vermont and was granted a Certificate of Public Good ("CPG") on May 19, 1997, to operate as a reseller of intrastate telecommunications services (CPG No. 293). Petition at 1.
2. WorldCom does not hold a CPG from the Board. Several WorldCom operating

subsidiaries are certificated and provide service in Vermont. Petition at 1.

3. Intermedia and WorldCom have executed an Agreement and Plan of Merger ("Agreement") whereby WorldCom will ultimately acquire ownership and control of Intermedia. The proposed acquisition as currently contemplated will be accomplished through a merger involving Wildcat Acquisition Corp. ("Wildcat"), a wholly-owned subsidiary of WorldCom. Pursuant to the proposed merger agreement, Wildcat will be merged with and into Intermedia, with Intermedia the surviving entity, and wholly-owned by WorldCom. Petition at 2.

4. Following the merger, Intermedia will continue serving current customers under existing service arrangements pursuant to the terms and conditions of its tariff. Accordingly, the merger will be virtually transparent to customers of Intermedia. Petition at 3.

5. Completion of the merger and transfer of control will serve the public interest in promoting competition among providers of interexchange telecommunications services. The merger is expected to enhance Intermedia's long-term financial viability. These enhancements will inure directly to the benefit of Vermont customers. The merger, therefore, should ensure the continued provision of telecommunications services to Intermedia's existing customers and should promote competition in the Vermont telecommunications service market. In sum, the proposed transaction will benefit the public interest by enhancing the ability of Intermedia to offer competitively priced services in the Vermont interexchange telecommunications marketplace. Petition at 5.

DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109 and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). The statutes also condition approval of a merger upon a finding that the merger will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting

securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A.

§ 107(c)(1).¹ In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition of Intermedia and WorldCom, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of Intermedia into the control of WorldCom, and thus results in the transfer of more than ten percent of the shares of Intermedia to another company. We further conclude that the merger will allow Intermedia to continue to operate in the current telecommunications marketplace and that the merger will not affect the services that Intermedia currently provides to customers in Vermont. The proposed transactions, therefore, will promote the public good. For all of these reasons, we conclude that the proposed merger and transfer of control meets the standards set forth in 30 V.S.A. §§ 107, 109 and 311, and should be approved.

CONCLUSIONS

The transfer of control of Intermedia to WorldCom, through the above described merger agreement, should be approved because it will promote the public good of the State of Vermont and will not result in obstructing or preventing competition in the provision of the services they are currently offering. 30 V.S.A. §§ 107(b), 311.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The merger of Wildcat with and into Intermedia is approved.
2. A Certificate of Consent to the merger of Wildcat with and into Intermedia shall be issued.
3. The transfer of control of Intermedia to WorldCom will promote the public good and, therefore, is approved.
4. Petitioners shall file a letter notifying the Board of the completion of the merger within ten days of such completion.

1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

DATED at Montpelier, Vermont, this 28th day of December, 2000.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
)	

OFFICE OF THE CLERK

Filed: December 28, 2000

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.